

HOUSE No. 1354

By Mr. Larkin of Pittsfield, petition of Peter J. Larkin relative to redeemable bottles and other containers used for packaging beverages, food and other consumable products. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO COMPREHENSIVE SOLID WASTE REDUCTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21K of the General Laws, as so appear-
2 ing, is hereby amended by adding at the end thereof the following
3 new chapter:—

4 CHAPTER 21L. 5 Comprehensive Solid Waste Reduction.

6 Section 1. “Beverage”, noncarbonated water including flavored
7 water, fruit and vegetable juices and drinks, coffee and tea drinks,
8 sport drinks, soda water or similar carbonated soft drinks, mineral
9 water, beer and other malt beverages, wine and wine-based drinks,
10 spirits and spirit-based drinks, hard cider, and all non-alcoholic
11 carbonated and noncarbonated drinks in liquid form intended for
12 human consumption or any other type of liquid distributed for
13 human consumption.

14 “Biodegradable”, capable of being broken down into innocuous
15 products by the action of microorganisms.

16 “Container”, any bottle, can, jar, carton, box, cup which is pri-
17 marily composed of glass, metal, plastic, paper, or any combination
18 of those materials and is produced for the purpose of containing
19 food, beverage, or tangible personal property. This definition shall
20 not include containers made of biodegradable material.

21 “Consumer”, any person who purchases a beverage, food, or
22 tangible personal property in a container for use or consumption
23 with no intent to resell such products.

24 “Dealer”, any person, including any operator of a vending
25 machine, who engages in the sale of any beverages, food, or tan-
26 gible personal property in containers to consumers in the com-
27 monwealth.

28 “Distributor”, any person who engages in the sale of bever-
29 ages, food, paper products, tangible personal property in con-
30 tainers to dealers in the commonwealth.

31 “Food”, includes cereals and cereal products, flour and flour
32 products, milk and milk products, including ice cream, oleomar-
33 garine, meat and meat products, fish and fish products, eggs and
34 egg products, vegetables and vegetable products, fruit and fruit
35 products, herbs, spices and salt, sugar and sugar products, candy
36 and confectionery; coffee and coffee substitutes, tea, cocoa and
37 cocoa products; and any other type of food distributed for human
38 or pet consumption.

39 “Person”, an individual, estate, trust, partnership, corporation
40 and any other business entity.

41 “Plastic”, any material made of polymeric organic compounds
42 and additives that can be shaped by flow.

43 “Tangible personal property”, personal property of any nature
44 consisting of any produce, goods, wares, merchandise and com-
45 modities whatsoever, brought into, produced, manufactured or
46 being within the commonwealth, but shall not include rights and
47 credits, insurance policies, bills of exchange, stocks and bonds
48 and similar evidences of indebtedness or ownership.

49 Section 2. (a) Beginning on July 1, 2006, the department of rev-
50 enue, in consultation with the department of environmental protec-
51 tion, shall impose on each container sold in Massachusetts a
52 packaging disposal fee of two cents per container. Said fees shall be
53 imposed upon distributors. If a dealer receives from within or out-
54 side of the state containers on which the fee imposed by this section
55 has not been paid, the packaging disposal fee is imposed on such
56 containers and collected by said dealer. If a manufacturer sells con-
57 tainers or products packaged in containers, which are subject to the
58 fee, directly to consumers, the fee is imposed on such containers.
59 The packaging disposal fee shall not appear as a separate charge on
60 the consumer purchase of any container subject to the fee.

61 (b) Before July 1 of each year, beginning in 2006, the depart-
62 ment of environmental protection shall determine, by preponder-

63 ance of evidence, the sustained recycling rate for each container
64 material type. Said department shall hold a public hearing in
65 accordance with said department's rules and procedures prior to
66 issuing recycling rates. Upon completion of a baseline rate for
67 each container type, said department shall establish recycling
68 goals for each type of container consistent with achieving a 70%
69 total solid waste reduction. Beginning July 1 of each year said
70 department shall decrease the packaging disposal fee imposed
71 under this section by an amount, not to exceed .5 cents in any
72 given year, for each container type that meets annual benchmarks
73 established by said department. Any person may appeal said
74 department's determination of recycling rates within 60 days of
75 notification of said rates. Said department shall review all evi-
76 dence submitted by any interested persons and issue a written
77 finding no later than 120 days from the notification of said rates.
78 Upon a favorable finding, said department shall reimburse any
79 monies collected pursuant to this section.

80 (c) The department of revenue shall administer, collect, enforce
81 and audit the fee authorized under this section. Proceeds of the
82 packaging disposal fee shall be remitted to said department
83 monthly.

84 (d) Any distributor, manufacturer or dealer failing to make full
85 and timely payments as required by this chapter shall pay interest
86 on any unpaid amounts at the rate of one and one-half percent for
87 each month or part thereof until payment is made in full. Every
88 person who fails to pay to the commissioner of revenue any sums
89 required by this chapter shall be personally and individually liable
90 therefor to the commonwealth. The term "person", as used in this
91 paragraph, includes an officer or employee of a corporation, or a
92 member or employee of a partnership, who as such officer,
93 employee or member is under a duty to pay over the taxes
94 imposed by this chapter.

95 (e) Amounts collected by the commissioner of revenue pursuant
96 to this section shall be deposited in the Solid Waste Reduction
97 Fund, established pursuant to section three.

98 Section 3. (a) There shall be established on the books of the
99 commonwealth a separate fund to be known as the Solid Waste
100 Reduction Fund. Amounts deposited in said Fund shall be used,
101 subject to appropriation, solely for programs and projects in the

102 management of solid waste and environmental protection pursuant
103 to paragraph (b) and for healthcare programs pursuant to para-
104 graph (c).

105 (b) The department of environmental protection shall expend
106 monies from the Fund for programs that are consistent with
107 achieving 70% waste reduction by the year 2010 as outlined in
108 said department's 2000 Solid Waste Master Plan. Funding shall
109 include, but not be limited to, programs for municipal waste
110 reduction, municipal curbside collection, source reduction,
111 product stewardship, hazardous products reduction, commercial
112 and institutional waste reduction, recycling market development
113 and construction and demolition debris reduction.

114 (c) 50 percent of the monies deposited into the Fund shall be
115 transferred to the Department of Public Health for the purposes of
116 substance abuse treatment and diversion programs. Said depart-
117 ment, subject to appropriation, shall expend monies from the Fund
118 for programs including, but not limited to, evaluation and assess-
119 ment, prevention, treatment and diversion; provided that said
120 sums shall be in addition to any amounts previously appropriated
121 and made available for said programs.

122 (d) The department of environmental protection may expend an
123 amount, not to exceed \$2,000,000 of the Fund, to administer the
124 provisions of this chapter. The department of revenue may expend
125 an amount, not to exceed \$3,000,000 of the Fund, to administer
126 the provisions of this chapter.

127 Section 4. (a) There is hereby established within the department
128 of environmental protection an advisory council to be known as
129 the Massachusetts Packaging Council for the purpose of ensuring
130 that the provisions of this chapter are adequately and fairly imple-
131 mented and that the recycled material content goals specified by
132 said department are technically sound.

133 (b) The advisory council shall consist of 3 appointments made
134 by the governor, 1 of whom shall be a representative of a Redemp-
135 tion Center, 1 of whom shall be a representative of the packaging
136 manufacturing industry, and 1 of whom shall be knowledgeable in
137 recyclable materials, 1 member appointed by the Retailers Associ-
138 ation of Massachusetts, 1 member appointed by the Grocery Man-
139 ufacturers of America, 1 member appointed by the Massachusetts
140 Food Association, 1 member appointed by the Massachusetts Soft

141 Drink Association, 1 member appointed by Associated Industries
142 of Massachusetts, 1 member appointed by the Massachusetts
143 Wholesalers Association, 1 member appointed by Massachusetts
144 Public Interest Research Group, 1 member appointed by the Beer
145 Distributors of Massachusetts, 1 member appointed by the Dis-
146 tilled Spirits Council of the United States, 1 member appointed by
147 the Wine and Spirits Wholesalers of Massachusetts, 1 member
148 appointed by the Massachusetts Municipal Association, 1 member
149 appointed by the Environmental League of Massachusetts, 1 mem-
150 ber appointed by MassRecycle, 1 member appointed by the Envi-
151 ronmental Business Council, 1 member appointed by the
152 American Plastics Council, 1 member appointed by the Steel
153 Recycling Institute, 1 member appointed by the Glass Manufac-
154 turing Industry Council, 1 member appointed by the American
155 Forest and Paper Association, and 1 member appointed by the
156 Aluminum Association. All members appointed shall have exper-
157 tise in the area of recycling or solid waste reduction. The commis-
158 sioner of the department of environmental protection or his
159 designee shall serve as an ex-officio member of the council. Said
160 department shall provide clerical and administrative support to
161 said council. Members of said council shall elect annually a
162 chairman and vice chairman and shall adopt by-laws governing
163 the affairs of said council. Members of said council shall serve
164 without compensation.

165 (c) The advisory council shall review, investigate and study the
166 recycling rates of each container type in Massachusetts. No later
167 than April 1 of each year, beginning in 2006, the advisory council
168 shall evaluate and make recommendations to the department of
169 environmental protection of the recycling rates for each container
170 type.

171 (d) On or before January 1 of each year, the advisory council
172 shall submit recommendations to the department of environmental
173 protection of any suggested legislative, regulatory or policy
174 changes necessary to meet the goal of 70% waste reduction and to
175 effectively implement the provisions of this chapter. Said recom-
176 mendations shall include, but not be limited to, an evaluation and
177 assessment of the effectiveness of the programs funded by the
178 Solid Waste Reduction Fund or any other existing state programs
179 designed to reduce solid waste; the creation of any new programs

180 to reduce solid waste; and the identification of new sources of
181 containers, if any, to be subject to the packaging disposal fee.

182 Section 5. (a) On or before September 1 of each year, beginning
183 in 2006, the department of revenue shall submit to the house and
184 senate committees on ways and means, the joint committee on
185 energy and the joint committee on natural resources and agricul-
186 ture a report detailing (1) the amount of money collected and
187 deposited in the Solid Waste Reduction Fund for the previous
188 fiscal year and the amount anticipated for the current fiscal year;
189 (2) the number and type of each container subject to the packaging
190 disposal fee; (3) the number of distributors and manufacturers
191 subject to the packaging disposal fee; (4) the number and type of
192 enforcement actions taken during the previous fiscal year; (5) the
193 cost to said department to administer the packaging disposal fee;
194 and (6) any legislative or regulatory changes necessary to improve
195 the collection, enforcement and process of implementing the pack-
196 aging disposal fee.

197 (b) On or before September 1 of each year, beginning in 2006,
198 the department of environmental protection shall submit to the
199 house and senate committees on ways and means, the joint com-
200 mittee on energy and the joint committee on natural resources and
201 agriculture a report detailing (1) the expenditures and uses allo-
202 cated from the Solid Waste Reduction Fund; (2) the effects of
203 the packaging disposal fee on recycling rates and reducing waste;
204 (3) the cost to administer the program; and (4) any legislative or
205 regulatory changes necessary to successfully increase recycling
206 and reduce solid waste in the commonwealth.

207 (c) The department of revenue and the department of environ-
208 mental protection shall promulgate rules and regulations to effec-
209 tuate the provisions of this chapter.

1 SECTION 2. Section 6 of chapter 64H, as appearing in the 2002
2 Official Edition, is hereby amended by striking out paragraph (q)
3 and inserting in place thereof the following paragraph:—

4 (q) (1) Sales of returnable containers when sold without the
5 contents together with the container; (2) returnable containers
6 when sold with the contents or resold for refilling. As used in this
7 paragraph the term “returnable containers” means containers of a
8 kind customarily returned by the buyer of the contents for reuse or

9 any container that is biodegradable. All other containers are “non-
10 returnable” containers. Nothing in this paragraph shall be con-
11 strued so as to tax the sale of bags in which feed for livestock and
12 poultry is contained. Any excise collected on nonreturnable con-
13 tainers shall be deposited in the Solid Waste Reduction Fund cre-
14 ated pursuant to chapter 21L of the General Laws.

1 SECTION 3. Sections 321 to 323, inclusive, of chapter 94 of
2 the General Laws, as appearing so appearing, are hereby repealed.

1 SECTION 4. Sections 323B to 323E, inclusive, 325, 326
2 and 327 of said chapter 94, as so appearing, are hereby repealed.

1 SECTION 5. Notwithstanding any general or special law to the
2 contrary, any remaining amounts of unclaimed deposits in each
3 bottler’s or distributor’s Deposit Transaction Fund pursuant to the
4 provisions of sections 321 to 327, inclusive, of chapter 94, shall
5 be deposited in the Solid Waste Reduction Fund created pursuant
6 to chapter 21L of the General Laws.

1 SECTION 6. Sections 2, 3, 4, and 5 shall take effect on July 1,
2 2006.